

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

CHARLES R. JOHNSON,

Plaintiff,

vs.

JAMESON ANNEX,

Defendant.

4:18-CV-04139-RAL

ORDER

On April 4, 2019, Plaintiff Charles R. Johnson filed a Notice of Appeal. Doc. 9. On April 8, 2019, the Eighth Circuit Court of Appeals remanded this case for calculation and collection of appellate filing fees pursuant to *Henderson v. Norris*, 129 F.3d 481 (8th Cir. 1997). Doc. 11.

Under the Prison Litigation Reform Act (PLRA), a prisoner who “files an appeal . . . [is] required to pay the full amount of a filing fee.” 28 U.S.C. § 1915(b)(1). This obligation arises “ ‘the moment the prisoner . . . files an appeal.’ ” *Henderson*, 129 F.3d at 483 (quoting *In re Tyler*, 110 F.3d 528, 529–30 (8th Cir. 1997)). Therefore, “ ‘[w]hen an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceedings or over a period of time under an installment plan.’ ” *Id.* (quoting *McGore v. Wrigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997)). “[P]risoners who appeal judgments in civil cases must sooner or later pay the appellate filing fees in full.” *Id.* (citing *Newlin v. Helman*, 123 F.3d 429, 432 (7th Cir. 1997)).

Henderson sets forth the procedures to be used to assess, calculate, and collect appellate filing fees in compliance with the Prison Litigation Reform Act of 1995 (PLRA). *Id.* at 483. Plaintiff has not filed the requisite paperwork to proceed in forma pauperis or paid the appellate

filing fee. "If the district court does not receive a certified copy of the prisoner's prison account within 30 days of the notice of appeal, it shall calculate the initial appellate filing fee at \$35 or such other reasonable amount warranted by available information[.]" *Id.* at 485 (emphasis added). An initial partial filing fee of \$35 is reasonable. Accordingly, it is

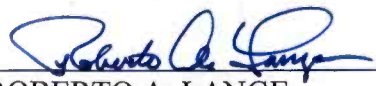
ORDERED that Plaintiff is granted leave to proceed in forma pauperis on appeal.

IT IS FURTHER ORDERED that Plaintiff must pay an initial partial filing fee of \$35 by May 22, 2019, made payable to the Clerk, U.S. District Court.

IT IS FURTHER ORDERED that the institution having custody of the Plaintiff is hereby directed that whenever the amount in Plaintiff's trust account exceeds \$10.00, monthly payments that equal 20 percent of the funds credited the preceding month to the Plaintiff's trust account shall be forwarded to the U.S. District Court Clerk's Office pursuant to 28 U.S.C. § 1915(b)(2), until the \$505 appellate filing fee is paid in full.

DATED May 6, 2019.

BY THE COURT:



ROBERTO A. LANGE
UNITED STATES DISTRICT JUDGE